

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
37.86.1801, 37.86.1802, 37.86.1806,)	ON PROPOSED AMENDMENT
and 37.86.1807 pertaining to durable)	
medical equipment and medical)	
supplies)	

TO: All Interested Persons

1. On November 15, 2007, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.86.1801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITIONS ~~(4)~~ (5) "Prosthetic devices" means replacement, corrective, or supportive devices or appliances which artificially replace a missing portion of the body to:

- (a) prevent or correct physical deformity or malfunction; or
- (b) support a weak or deformed portion of the body.

~~(2)~~ (1) "Durable medical equipment" means the most economical and medically necessary equipment appropriate for use in a patient's home, ~~or~~ residence, school, or workplace as outlined in ARM 37.86.1802(4) including, but not limited to, wheelchairs, walkers, canes, crutches, hospital beds, oxygen equipment, and sickroom equipment.

~~(3)~~ (2) "Medical supplies" means disposable or nonreusable medical supplies, including, but not limited to, splints, bandages, and oxygen.

(3) "Prescription" means a prescription or order as provided in ARM 37.86.1802.

(4) "Prior authorization" means the Medicaid program's review and approval of an item's medical necessity and coverage by Medicaid prior to the delivery of the item.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in rule provisions generally applicable to Medicaid providers. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing facility residents are contained in the department's rules governing nursing facility reimbursement when the nursing facility bills for separately billable items as a skilled nursing durable medical equipment provider as outlined in ARM 37.40.330.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. The items must be medically necessary and prescribed ~~in writing prior to delivery~~ in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. ~~Prescriptions for medical supplies used on a continuous basis shall be renewed by a physician at least every 12 months and must specify the monthly quantity of the supply.~~ Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) shall follow the Medicare guidelines outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual (July 1, 2007), which is adopted and incorporated by reference. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) remains the same.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the Medicare criteria ~~set forth in the~~ outlined in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, Coverage Issue 60-4, Use of Home Oxygen, pages X-5 through X-9, (December 1, 1997), (July 1, 2007), Local Coverage Determination (LCD) and policy articles (July 1, 2007), and National Coverage Determination (NCD) (July 1, 2007), which is are adopted and incorporated by reference. The Medicare criteria specify the health conditions and levels of hypoxemia in terms of blood gas values for which oxygen will be considered medically necessary. The Medicare criteria also specify the medical documentation and laboratory evidence required to support medical necessity. A copy of the Medicare criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) through (3) remain the same.

(4) Reimbursement for out-of-home use includes:

(a) medically necessary wheelchair tie downs and head rests for transportation to work or school and laterals and flat free inserts required for activities in the workplace or at school used by children age 20 and under; and

(b) medically necessary wheelchair tie downs and head rests for transportation outside the home to go to work or school and laterals and flat free inserts used by adults in the workplace or at school.

(5) Reimbursement for nursing home residents includes:

(a) medically necessary custom molded wheelchair positioning equipment used by nursing home residents not covered under nursing home per diem (see department nursing home rules). A copy of the Medicaid criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(4)~~ (6) The following items are not reimbursable by the program:

(a) items determined not to be medically necessary by the Medicare program, except as provided in (3);

(b) orthopedic shoes, corrections, and shoe repairs unless the criteria in ~~(4)(b)(i)~~ (6)(b)(i) or (ii) are met and the physician's prescription indicates that:

(i) the shoes are attached to a brace or orthotic device which cannot be accommodated in a regular shoe; or

(ii) the shoes are covered under Medicare criteria for therapeutic shoes for diabetics under the same conditions ~~The department adopts and incorporates by reference the Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual for coverage of therapeutic shoes for diabetics (March 1998). This manual describes the conditions under which the Medicare program will cover therapeutic shoes for diabetics. A copy of the Medicare criteria is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951;~~

(c) through (p) remain the same.

(q) personal computers; ~~and~~

(r) sexual aids or devices;

(s) items included in the nursing home per diem rate; and

(t) backup equipment.

(5) remains the same but is renumbered (7).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.1806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair, and services are as follows:

(a) through (a)(ii) remain the same.

(b) For all purposes under this rule and ~~ARM 37.86.1806 and~~ 37.86.1807, the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price. For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%. For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in (3).

(c) through (2) remain the same.

(3) Medicaid reimbursement for items provided on a rental basis is limited as follows:

(a) Total Medicaid rental reimbursement for items listed in Medicare's capped rental program or classified by Medicare as routine and inexpensive rental will be limited to ~~420%~~ 105% of the purchase price for that item. Monthly rental fees will be limited to 10% of the purchase price for the first three months and 7.5% of the remaining months and payments will be limited up to 12 13 months or less as outlined in chapter 5 of the Region D Medicare Supplier Manual.

(i) For purposes of this limit, the purchase price is the purchase fee specified in the department's fee schedule established under ARM 37.86.1807.

(ii) Interruptions in the rental period of less than 60 days will not result in the start of a new ~~42-~~ 13-month period or new ~~420%-of~~ purchase price limit, but periods in which service is interrupted will not count toward the ~~42-~~ 13-month limit.

(iii) A change in supplier during the ~~42-~~ 13-month period will not result in the start of a new ~~42-~~ 13-month period or new ~~420%-of~~ purchase price limit. Providers are responsible to investigate whether another supplier has been providing the item to the recipient and Medicaid will not notify suppliers of this information. The provider may rely upon a separate written statement of the recipient that another supplier has not been providing the item, unless the provider has knowledge of other facts or information indicating that another supplier has been providing the item. The supplier providing the item in the ~~twelfth~~ thirteenth month of the rental period is responsible to transfer ownership to the recipient.

(iv) If rental equipment is changed to different but similar equipment, the change will not result in the start of a new ~~42-~~ 13-month period or new ~~420%-of~~ purchase price limit, unless:

(A) the change in equipment is medically necessary as a result of a substantial change in the recipient's medical condition;

(B) a new certification of medical necessity for the new equipment is completed and signed by a physician; and

(C) the Acute Services Bureau prior authorizes the change in equipment.

(b) During the ~~42-~~ 13-month rental period, Medicaid rental reimbursement includes all supplies, maintenance, repair, components, adjustments, and services related to the item during the rental month. Separately billable supplies allowed by Medicare will be reimbursed by Medicaid as outlined in the most current Region D Medicare Supplier Manual. No additional amounts related to the item may be billed or reimbursed for the item during the ~~42-~~ 13-month rental period. The supplier providing the rental equipment during the rental period is responsible for all maintenance and servicing of the equipment.

(c) After ~~42~~ 13 months rental, the recipient will be deemed to own the item and the provider must transfer ownership of the item to the recipient. After the ~~42-~~ 13-month rental period, the provider may bill separately for supplies, maintenance, repair, components, adjustments, and services related to the item, subject to the requirements of these rules, except that repair charges are not reimbursable during the manufacturer's warranty period.

(d) All rentals will be paid on a monthly basis, except ~~air fluidized beds~~ phototherapy (bilirubin) lights which will be reimbursed at a daily rental rate.

(i) Medicaid will pay an entire monthly rental fee for the initial month of rental even if less than a full month. When a rental extends into a second or subsequent month, Medicaid will pay a rental fee for a partial month only if the partial month period is at least 15 days.

(e) Items classified by Medicare as needing frequent and substantial servicing will be reimbursed by Medicaid on a monthly rental basis only. The ~~420%~~ cap specified in (3)(a) does not apply and rental reimbursement may continue as long as the item is medically necessary.

(f) through (6) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule, effective ~~July 2006~~ January 2008, which is adopted and incorporated by reference. A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies Fee Schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) The department's DMEPOS Fee Schedule for items other than ~~those wheelchairs and items~~ billed under generic or miscellaneous codes as described in (1) shall include fees set and maintained according to the following methodology:

(a) 100% of the Medicare region D allowable fee;

(b) Except as provided in (4), for all items for which no Medicare allowable fee is available, the department's fee schedule amount shall be 75% of the provider's usual and customary charge, ~~until a reasonable fee is established through a pricing cluster as described in (3)(b)(ii).~~

(i) For purposes of (3)(b) and (4), the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

(A) The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price.

(B) For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(C) For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(D) For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in ARM 37.86.1806(3).

~~(ii) For the purposes of (3)(b), a pricing cluster consists of product retail price lists from manufacturers and distributors. Such pricing is used to compare all provider billed charges for an item/service billed under a specific procedure code. The average charge from a 12-month period is considered reasonable if equal to or less than the average retail price of the pricing cluster. If the average charge is considered reasonable, a permanent fee will be set at 75% of the reasonable charge.~~

~~(iii)~~ (ii) Items having no product retail list price, such as items customized by the provider, will be reimbursed at 75% of the provider's usual and customary charge as defined in (3)(b)(i).

(4) The department's DMEPOS Fee Schedule, referred to in ARM 37.86.1807(2), for ~~all wheelchairs and~~ items billed under generic or miscellaneous codes as described in (1) shall be 75% of the provider's usual and customary charge as defined in (3)(b)(i).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.1801, 37.86.1802, 37.86.1806, and 37.86.1807 that provide for Medicaid reimbursement of durable medical equipment (DME) services. The changes to existing policy would include making DME useable in school and workplace settings, change procedures for transmitting DME prescriptions and orders, change the way providers are reimbursed for wheelchairs, allow reimbursement for positioning items in nursing facilities, adopt Medicare's method of reimbursement for rental equipment, update references to Medicare manuals, correct grammatical errors and delete obsolete provisions. Specific descriptions of each proposed amendment are set forth below.

ARM 37.86.1801

This proposed change to ARM 37.86.1801(2) was recommended by the Montana House Joint Resolution 32 Workgroup. It adds school and workplace as places durable medical equipment can be used. Equipment needs to be usable in both schools and workplaces for children and adults. This amendment will ensure children and adults have equipment to be able to attend school and hold a job.

ARM 37.86.1802

The proposed change to ARM 37.86.1802(1) would make it clear that billing of durable equipment items is not allowed when patients are in the nursing facility. Nursing facility rules apply when the durable medical equipment provider is the

nursing facility. Nursing facilities reimbursement methodology is different than for durable medical equipment providers.

The proposed change to ARM 37.86.1802(2)(a) identifies the means by which a prescription can be transmitted to the durable medical equipment provider. It would allow the prescribing provider to keep the original in their records and the durable medical equipment provider to be able to take an oral prescription and reduce it to hard copy or accept a faxed copy of a prescription. This would ensure the provider has the correct documentation before delivering the equipment. It also would prevent delays in delivery. This amendment also incorporates the requirements for prescriptions to follow the Medicare guidelines in chapter 3 and 4 of the Medicare Supplier Manual. For items requiring prior authorization the documentation must include a prescription. This change to ARM 37.86.1802(2)(b) would also update the incorporation by reference of the current Medicare Supplier Manual, Medicare's local coverage determination and policy. Medicaid uses Medicare criteria to reimburse oxygen services.

The proposed change to ARM 37.86.1802(4) was recommended by the House Joint Resolution 32 Workgroup. It outlines exceptions to the Medicare criteria for medically necessary wheelchair equipment allowed for transportation to work or school and for equipment for out of home activities. Head rests and laterals support the patient in the wheelchair so no further injury can occur. Tie downs are used to safely transport recipients to school, work, and doctor appointments. Flat free inserts are tires that will enable a wheelchair's tires to last longer and withstand daily use outside the home. The wheelchair accessories are necessary for patient safety.

The proposed change to ARM 37.86.1802(5) was recommended by the House Joint Resolution 32 Workgroup. It allows Medicaid to reimburse durable medical equipment providers for custom positioning items for patients in a nursing facility. Custom positioning items are necessary for the patient's safety and well being. Positioning items for patients in the nursing facility are needed when a standard wheelchair does not fulfill the needs of a nursing facility patient.

The proposed change to ARM 37.86.1802(6)(b)(ii) would update the reference to the Medicare Supplier Manual adopted in ARM 37.86.1802(2)(b). Medicaid uses Medicare criteria for therapeutic shoes for diabetics.

Proposed new ARM 37.86.1802(6)(s) would add the condition that durable medical equipment items are noncovered if they are included in the nursing home per diem rate.

Proposed new ARM 37.86.1802(6)(t) clarifies that backup equipment is a noncovered item.

ARM 37.86.1806

The proposed change to ARM 37.86.1806(3) follows Medicare rental policy. It would

change the Medicaid 12-month capped rental to match the Medicare 13-month rental. This change adopts the Medicare 13-month rental cap and the maximum Medicare reimbursement amount.

The proposed change to ARM 37.86.1806(3)(b) would provide for the billing of supplies when Medicare allows reimbursement. Reimbursement for items that are rented includes the maintenance and repair of rented equipment. However, Medicare allows durable medical equipment providers to be separately reimbursed for certain supplies.

The proposed change to ARM 37.86.1806(3)(d) adds phototherapy (bilirubin) lights to the list of rentals that are billed on a daily basis. This item is used for newborn babies when their bilirubin levels are low. The average use of bilirubin lights is five days. The proposed change was approved by the House Joint Resolution 32 Work Group. The proposed amendment would also remove air fluidized beds as reimbursable on a daily rate because there is no daily fee from Medicare. Fluidized beds would still be reimbursable on a monthly rate.

ARM 37.86.1807

The proposed change to ARM 37.86.1807(2) updates for effective date of the department's latest fee schedule.

The proposed amendment to ARM 37.86.1807(3) removes wheelchairs from the "by report" reimbursement methodology. Wheelchairs would now be paid in accordance with the Medicare fee schedule. This amendment would also correct the reference that identifies the fee schedule.

The proposed definition of ARM 37.86.1807(3)(b)(ii) removed the reference to fee pricing clusters. The department no longer uses this methodology. Fees are now either Medicare fees or "by report" fees. Medicaid intends to adopt Medicare fees except for those items Medicare does not cover or items with no Medicare fees. These items will be paid at the "by report" percentage. The following subsections are renumbered but unchanged.

The proposed amendments to ARM 37.86.1807(4) reference the fee schedule rule and would remove wheelchairs from being paid by report. They will be paid at Medicare fees.

Fiscal Effects and Persons Affected

These proposed changes could potentially affect 116,659 Medicaid recipients, 381 enrolled Montana Durable Medical Equipment providers, and 257 enrolled out-of-state providers.

The financial impact of accepting Medicare fees for wheelchairs will save the department \$75,015.82.

5. The department intends the rule changes to be applied effective January 1, 2008.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State October 15, 2007.